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No. 464

IN THE

SUPREME COURT OF THE UNITED STATES.

BUFORD JAMES et. al.; SOUTHERN DAIRIES et al.,
Appellants,

v.

A. W. TODD, as Commissioner of Agriculture and Industries of the State of Alabama,
Appellee.

On Appeal from the Supreme Court of Alabama.

JURISDICTIONAL STATEMENT.

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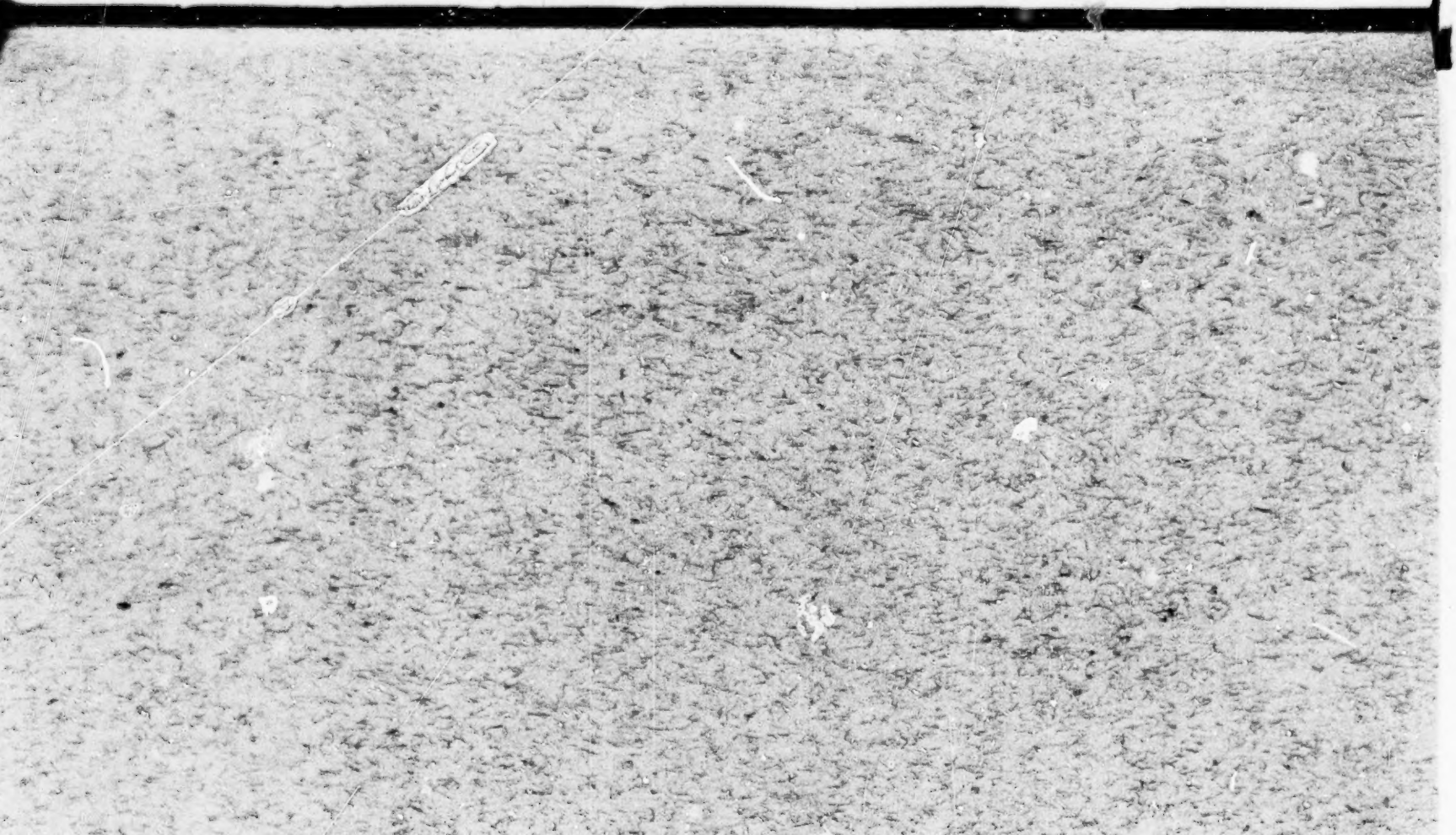

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A. W. TODD, as Commissioner of Agriculture and Industries of the State of Alabama,
Appellee.

On Appeal from the Supreme Court of Alabama.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment and decree of the Supreme Court of Alabama, entered on August 22, 1957, application for a rehearing of which judgment or decree was denied on June 5, 1958, affirming a decree of the Circuit Court of Montgomery County, Alabama, in Equity, upholding the constitutionality of a State statute, to-wit, Act No. 570, General and Local Acts of the Legislature of Alabama, 1955, page 1239 (Code of Alabama, 1940, Title 22, Section 231 [6-13]), the validity of which was drawn in question on the ground of its being repugnant to Article I, Section 8, Clause 3; Article IV, Section 2, of the Constitution of the United States, Section 1 of the Fourteenth Amendment thereto, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the Supreme Court of Alabama is reported in ... Ala. ..., 103 So. 2d 19, 29. A copy of the final decrees of the Circuit Court of Montgomery County, Alabama, identical in both cases prior to consolidation together with the opinion of said Court, and of the opinion of said Court on motion to dissolve temporary restraining orders, together with the Supreme Court of Alabama opinions, are attached hereto as Appendix A.

JURISDICTION.

These suits were brought for a declaratory judgment under the authority of the Code of Alabama of 1940, Title 7, Section 156, et seq., in the Circuit Court of Montgomery County, Alabama. A temporary restraining order and permanent injunction were sought. The decree of the Circuit Court of Montgomery County, Alabama, was entered on June 23, 1956. The decree of the Supreme Court of Alabama was entered on August 22, 1957, and application for a rehearing thereon was entered on June 5, 1958. Notice of appeal was filed in that Court on August 29, 1958. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Section 1257 (2).

QUESTION PRESENTED.

Is Act No. 570, General and Local Acts of the Legislature of Alabama, 1955, page 1239 (Code of Alabama, 1940, Title 22, Section 231 [6-13], Pocket Part), which places on the purchase and sale of out-of-State milk burdens and restrictions not applicable to milk produced in Alabama, in view of the nature of such burdens and restrictions, under the circumstances prevailing in the business of producing and selling milk, invalid on its face and uncon-

stitutional by virtue of Article I, Section 8, Clause 3 (the commerce clause), Article IV, Section 2 (the privileges and immunities clause), of the Constitution of the United States and Section 1 of the Fourteenth Amendment (equal protection) to the Constitution of the United States?

STATUTES, BOARD OF HEALTH AND DEPARTMENT OF AGRICULTURE REGULATIONS AND ALABAMA STATE MILK CONTROL BOARD ORDERS.

Act No. 570, General and Local Acts of the Legislature of Alabama, 1955, page 1239 (Code of Alabama, 1940, Title 22, Section 231 [6-13], Pocket Part); Act No. 65, Second Special Session of the Legislature of Alabama of 1955 (Code of Alabama, 1940, Title 22, Chapter 7A, Pocket Part, Section 231 [1-5], Code of Alabama, 1940, Title 22, Sections 6 and 7), Board of Health and Department of Agriculture regulations involved and pertinent, official orders of the Alabama State Milk Control Board are set forth in Appendix B hereto.

STATEMENT.

Material Facts.

There are two cases involved in this appeal, consolidated in the Circuit Court of Montgomery County and bearing the Supreme Court of Alabama numbers 769 and 769A.

No. 769 was brought by six Mississippi and Tennessee milk producers who were engaged in the production of Grade A milk which they sold in Mississippi or Tennessee to Alabama distributors for consumption by the public in Alabama. The action was a class action, on behalf of several hundred milk producers similarly situated.

No. 769A was brought by five milk distributing companies located in Alabama, which companies purchased

milk from the producer complainants in No. 769, and, in times of shortage, supplemental milk from various other approved out-of-state sources of supply.

The State of Mississippi intervened in both cases, and such intervention was permitted by the Circuit Court.

The annual importation from Mississippi is valued at about $2,600,000.00, that from Tennessee probably over $1,000,000.00.

In past years there have been several attempts on the part of official agencies of the State of Alabama to prevent this importation, in spite of the fact that Alabama is a deficit milk-producing state. The question of price paid by distributors to producers in and out-of-state has played a major part, since prices paid for in-state milk are regulated by the State Milk Control Board and are higher than prices paid to Mississippi and Tennessee producers on an open market.

These efforts culminated in the passage by the Legislature of Alabama in 1955 of Act No. 570, the act in question.

Explanation of Quota.

Arrangements between producer and distributor must be on an annual basis. by reason of the fluctuation in supply and the consequent fluctuation in production costs. The distributor must at all times have enough to meet demand. Such milk as is surplus in periods of large production is paid for, and sold, at a lesser rate: all milk used for consumption as fluid milk is paid for and sold at a higher price. Hence a quota system must be, and is, set up, so that the producers can count on receiving the higher price for their proper shares of the milk sold for higher prices—this system being on an annual basis.

Both producers and distributors have large investments.

Prior Regulation and Enforcement.

Prior to the passage of Act No. 570, the State Health Department, a non-political body, has for many years alone been charged with the adoption of regulations and their enforcement with reference to the production of milk, both in and out of state, for sale in Alabama, and the sale of such milk in Alabama. Standards have long been established and no locality has been permitted to lessen them. Enforcement has been vigorous and adequate, state-wide, and of the out-of-state supply. No epidemic traceable to milk has occurred in many years. All supplemental milk, which comes from Wisconsin in times of local shortage, is certified by the Chicago Board of Health or by Milk Control District No. 1 of Philadelphia and is laboratory-tested, on arrival, by the State Health Department.

There is not one word in the record showing inadequacy of regulations or enforcement by the Health Department; on the contrary, all testimony shows adequacy and efficiency on their part, with excellent results.

Further to strengthen the hands of the Health Department, to develop a further uniform health standards of production, both within and without the State, handling and distribution of milk and to provide a formula whereby milk from one section of the state could flow freely to another section of the state, Act No. 65 of the Second Special Session of the Legislature of 1955 (Code, 1940, Title 22, Chapter 7A, Pocket Part, Section 231 [1, 2, 3, 4, 5]) was adopted, providing for issuance of permits by the State Health Department to producers in and out-of-state and to distributors, on an annual basis.

Prior to the filing of the complaints on November 17, 1955, enforcement of Act No. 570 had begun.

Act No. 570 Is Violative of the Cited Provisions of the Constitution of the United States for the Following Reasons.

I. The Act, with all of its burdens, applies only to out-of-state milk. But local and out-of-state production and sale are still controlled by the Health Department as formerly.

II. The Act adds an additional burden of inspection, regulation and permits upon the out-of-state producer and the distributor who handles his milk, in addition to the inspection, regulation and permits of the Health Department.

III. The Act permits the adoption of regulations differing from and more stringent than the Health Department regulations.

IV. The Act prevents the importation where the milk is sold by producer to distributor out-of-state.

V. The permits granted under Act No. 570 are for a six-months' period only, expiring at a time when production is on an increase, production costs lessening, and the farmer can make a profit: placing an impossible burden on the out-of-state producer.

VI. The issuance of permits by the Commissioner of Agriculture is discretionary, whereas the issuance by the Health Department is mandatory if the producer or distributor is in compliance with health regulations.

VII. Under Act No. 570, in case of suspension or revocation of the permits there is no provision for notice. The health laws have this provision.

VIII. Under the Health Regulations there must be ground for the revocation of permits. Under Act No. 570 the revocation can be arbitrary and groundless.

IX. Under Act No. 570 there is no provision for reinstatement of a revoked permit—under the Health laws there is.

X. Under the Health Rules and Regulations the permitholder has an appeal to the State and County Health authorities on revocation. Under Act No. 570 there is no appeal except to the courts and the appeal section is completely ineffective, for the following reasons: (a) there is no appeal from mere failure to act; (b) there is no supersedeas provision.

XI. There is no provision in Act No. 570 for the issuance of permits for spot shipments (Supplemental milk).

XII. The Commissioner can, under Act 570, simply fail to act on an application for a permit, and the applicant has no appeal.

XIII. Inspection by the Commissioner is not mandatory and no permit can issue until such inspection is accomplished.

FEDERAL QUESTIONS RAISED.

The questions as to the invalidity of Act No. 570 under the cited sections of the Constitution of the United States and the Fourteenth Amendment thereto were raised in the complaints originally filed in the Circuit Court of Montgomery County by specifically attacking the constitutionality of 570 in said complaints: in the Supreme Court of Alabama by assignments of error raising the specific questions in connection with the appeal to that court. The Circuit Court of Montgomery County, in its decree of June 23, 1956, held that Act No. 570 was constitutional and valid: the Supreme Court of Alabama in its decree of August 22, 1957, upheld the constitutionality of Act No. 570 and on June 5, 1958, denied application for rehearing.

THE QUESTIONS ARE SUBSTANTIAL.

1. There is inextricably involved the rights of the producers of the States of Mississippi and of Tennessee to sell to Alabama distributors for use in the Alabama market, and for the Alabama distributors to buy, milk produced in Mississippi and Tennessee, without such unfair, unwarranted and burdensome restrictions as are prohibited by the Constitutional sections cited. Large interests are involved—the businesses of several hundred Mississippi and Tennessee producers are vitally affected, as are the Alabama distributors. The rulings of the lower court and of the Supreme Court of Alabama upholding the validity of Act No. 570 against attack on the cited Constitutional grounds bring the case within the jurisdictional provision relied on. The statute, 28 U. S. C., Section 1257 (2), specifically provides for appeals such as in the instant case, where the statute is attacked on constitutional grounds and the decision is in favor of its validity.

This type of case presents cogent reasons for the full consideration of the Court. In large measure conduct on the part of the State, such as is evidenced by the enactment of 570, was the motivating force in the adoption of the Constitution. Legislation seeking economic advantages for the citizens of one State as against another, if permitted to stand, would result in chaos, since reprisal inevitably follows.

The issues in this case are similar to those raised in **John A. Brimmer, Jr., Sergeant of the City of Norfolk, v. William Rebman,** 138 U. S. 78, 34 L. Ed. 862; **Minnesota v. Barber,** 136 U. S. 313, 34 L. Ed. 455; **Voigt v. Wright,** 141 U. S. 62, 35 L. Ed. 638; **Dean v. Madison,** 340 U. S. 349, 95 L. Ed. 329; **Toomer v. Witsell,** 334 U. S. 385, 92 L. Ed. 1460, and many others considered by the Supreme Court of the United States.

2. No evidence was introduced by the respondent, the Commissioner of Agriculture. The testimony of the witnesses for complainants-appellants and the exhibits introduced positively and definitely established the following facts: (1) The adequacy of present inspections by the Health Department; (2) the excellent quality of imported milk; (3) the necessity of annual arrangements; (4) the necessity for importations to supply the demand; (5) the prior attempts by State Agencies to prevent importation, in some instances absolutely, in others where the price was less than that obtained for Alabama-produced milk; (6) the importance of the business of appellants, the large sums of money involved and the effect on producer-appellants of the loss of their market.

In passing on the Constitutionality of a statute, the Court does not act in a vacuum. It considers evidence such as was introduced in the trial of this cause, the facts and circumstances under which the legislation was passed, other legislation in pari materia, the history of the times, the intent of the legislation, the former state of the law, the conditions leading to its adoption, the ordinary and natural effect of the statute. **Dean Milk Company v. Madison**, 340 U. S. 349, 95 L. Ed. 329; **Hood v. DuMond**, 336 U. S. 525, 93 L. Ed. 865; **Toomer v. Witsell**, 92 L. Ed. 1460; **Gregg Dyeing Company v. Query**, 286 U. S. 472, 76 L. Ed. 1232; **Baldwin v. Seelig**, 294 U. S. 511, 79 L. Ed. 1032; **Best & Company v. Maxwell**, 311 U. S. 454, 85 L. Ed. 275.

It is submitted that the decision of the Supreme Court of Alabama in the consolidated cases is in error in upholding the validity of Act No. 570, the effect of which will be to burden the business of producing milk for shipment into Alabama and the business of purchasing and selling such milk in Alabama to such an extent as to cause the destruction of the business of the producers and distributors engaged therein. We believe that the questions presented by

this appeal are substantial and that they are of public importance.

Respectfully submitted,

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State of Mississippi.

Proof of Service.

I, Frank M. Dixon, one of the attorneys for appellants herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 14 day of October, 1958, I served copies of the foregoing jurisdictional statement on Mr. John Patterson, Attorney General of the State of Alabama, who is attorney for appellee, A. W. Todd, Commissioner of Agriculture and Industries of the State of Alabama, as follows:

By depositing the same in the United States Post Office at Birmingham, Alabama, with first-class postage prepaid, addressed to said John Patterson at the Office of the Attorney General of Alabama in Montgomery, Alabama.

Frank M. Dixon,
803 Comer Building,
Birmingham 3, Alabama.

October 14, 1958.

APPENDIX A.

Buford D. James, et als., Complainants, #29836 vs. A. W. Todd, as Commissioner of Agriculture and Industries of the State of Alabama, Respondent.	In the Circuit Court of Montgomery County, Alabama, In Equity.

Final Decree and Declaratory Judgment of the Court.

This cause coming on to be heard for final decree is submitted for the decision of the court upon the bill of complaint as last amended, the answer of the respondent, the agreement of counsel, and the testimony as noted by the register, and upon consideration of the same it is

Ordered, Adjudged, Decreed and Declared by the Court as follows:

1. That Act No. 570, General and Local Acts of Alabama 1955, page 1239, and the rules and regulations promulgated in pursuance of it on October 21, 1955, are constitutional and valid.

2. That the respondent A. W. Todd, as Commissioner of Agriculture and Industries of the State of Alabama, has committed no unlawful or unconstitutional acts against the complainants in the performance of his duty under Act No. 570, supra, or the rules and regulations promulgated under it, which would warrant this court in issuing a permanent injunction.

3. That the temporary injunction heretofore issued in this cause on November 17, 1955, be and the same hereby is dissolved and held for naught at the expiration of ten days from the date of this decree.

4. That the costs, to be taxed by the register, be paid by the complainants, for which execution may issue.

Done at Montgomery, Alabama, this the 23 day of June, 1956.

Walter B. Jones,
Circuit Judge.

Filed in Office 23 Day of June, 1956.

Geo. H. Jones, Jr., Register.

Southern Dairies et al., 29838; Buford James et al., 29836, Complainants, v. A. W. Todd, as Commissioner of Agriculture and Industries of the State of Alabama, Respondent.	In the Circuit Court of Montgomery County, Alabama, In Equity.

This suit and its companion suit, Buford D. James et als., complainants v. A. W. Todd, as Commissioner of Agriculture and Industries of the State of Alabama, respondent, Docket No. 29836, in which the State of Mississippi has intervened as a party complainant, are now before the Court for decision on the merits.

The said two cases have been consolidated by agreement of the parties, with the approval of the Court, and are submitted for decision of the Court upon the bills of complaint, as last amended, the answers of the respondent, the agreement of counsel as to consolidation, and the testimony as noted by the agreement of counsel as to consolidation, and the testimony as noted by the Register in each case.

The complainants in Docket No. 29838 are corporations duly qualified and doing business within the State of Alabama as distributors of fluid milk for human consumption and of milk by-products, and have for many years purchased such fluid milk from producers located within the State of Mississippi or Tennessee, as well as Alabama. They have expended large sums of money in building up the production of milk in all three such areas and have made large investments in Mississippi and Tennessee for such purposes. Certain of the companies have constructed receiving stations and cooling plants in Mississippi. All have expended considerable sums of money on the salaries and expenses of employees in encouraging farmers to produce milk for delivery to them, and have secured equipment for the transportation and shipment of such milk to Alabama.

The complainants in Buford D. James et als., Docket No. 29836, are producers of fluid milk for human consumption with their farms located within the States of Tennessee and Mississippi, and have for many years sold such milk to distributors located in the State of Alabama for distribution within the State of Alabama, and have expended considerable sums of money in building barns and other buildings and in the purchase and installation of the necessary equipment and facilities.

Each of said suits is a civil action for declaratory judgment, together with injunctive and other appropriate relief.

Each of said suits questions the constitutional validity of Act No. 570, General and Local Acts 55, Page 1239, on various grounds set forth in the bills of complaint, the main insistence being that the Acts and the rules and regulations made in pursuance of it on October 21, 1955, burden interstate commerce, and deny due process of law to com-

plainants, and otherwise deprive them of their rights under the Constitution and laws of the United States and the State of Alabama.

The Court has given due consideration to the constitutional questions presented in the light of the evidence introduced and the oral arguments and briefs of counsel of the respective parties, and is of the opinion that Act No. 570, supra, and the said rules and regulations promulgated under it, were enacted and promulgated in the exercise of the police power of the State of Alabama, and especially that segment of the police power for the protection and promotion of the public health of the people of the State.

It is well settled that a State, under its police power, has the right to protect its inhabitants against peril to health or safety even by the use of measures which bear adversely upon interstate commerce. Such a regulation cannot be declared invalid if within the range of police power, unless it can be said that it has no reasonable relation to a legal purpose to be accomplished by its enactment.

The purpose of Act. No. 570, supra, and the rules and regulations promulgated under it, is to more effectively utilize the existing agencies or departments of the State of Alabama in regulating the production, processing and distribution of milk and milk products, to the end that the inhabitants of the State of Alabama will be supplied with a wholesome and healthy supply of milk, cream, and other milk products. Such is plainly within the State's police power, and the necessity and wisdom for such legislation is for the determination of the Legislature, and not for the Courts.

It is also well to bear in mind that Courts of Equity have no power to restrain public officers by injunction from performing any official act which they are by law re-

quired to perform, or acts which are not in excess of the authority and discretion reposed in them, and an injunction is not authorized wher it is merely apprehended that a State officer may act in an unauthorized manner.

The Court is of the opinion, after due consideration of the legal evidence introduced, that it fails to show that respondent, Todd, has committed any act or acts which would justify the Court in further continuing in force and effect the temporary injunctions heretofore issued on November 17, 1955.

It is, therefore, the opinion of the Court that in each of the cases, Docket No. 29836 and Docket No. 29838, Act No. 570, supra, and the rules and regulations promulgated thereunder, should be by the Court declared to be constitutional and valid, and the temporary injunctions heretofore issued dissolved.

It is the further opinion of the Court that the decrees dissolving said temporary injunctions shall not be effective until ten days from the date hereof.

The proper decrees will be filed with the Register at this time in accordance with the statements of law contained hereinabove.

Done at Montgomery, Alabama, this the 23 day of June, 1956.

/s/ Walter B. Jones,
Walter B. Jones,
Circuit Judge.

Buford D. James, et als., Complainants, #29836 vs. A. W. Todd, as Commissioner of Agriculture, Respondent.	In the Circuit Court of Montgomery County, Alabama, In Equity.

Opinion on Motions to Dissolve Temporary Restraining Orders Granted November 17, 1955.

This suit and its companion suit, Docket Number 29833, are now before the Court on the Motion of the Respondent to dissolve the temporary injunction issued in this cause on November 17, 1955, which said restraining order is now in force and effect.

This proceeding is a civil action for a declaratory judgment, together with injunctive and other appropriate relief sought by Complainants.

As the pleadings now stand, the Court has before it the original bill, as last amended, the motion to dissolve the temporary restraining order, the demurrer to the bill, and certain interventions which are not being considered at this time. The answer of the Respondent has not come in.

The question standing at the threshold of this case involves the constitutional validity of Act Number 570, Alabama Legislature, Regular Session, 1955, approved September 9, 1955, the general purpose of which is to regulate, test and grade milk coming into Alabama from other states, and to prescribe condition for the transportation of the milk described in the Act into Alabama from other states. At Bar in the argument this Act Number 570 was referred to and is commonly known as the Todd Bill.

The Complainants attach to their bill several pertinent exhibits. Among them is Exhibit D, which gives "Rules

and Regulations governing the transportation of milk into the State of Alabama, promulgated, approved and adopted pursuant to Act No. 570, Legislature of Alabama, 1955 (Regular Session)."

It is the contention of the Complainants in this action for the declaratory judgment that they are representative of a class of milk producers who are residents of the states of Mississippi and Tennessee, and their insistence is that the Todd Bill and the regulations made in pursuance of it on October 21, 1955, burden interstate commerce, and deny due process of law to Complainants and otherwise deprive them of their rights under the Constitution and laws of the United States. In the argument at Bar it was insisted that the Todd Bill is invalid on its face.

Among the exhibits to the Bill are several affidavits to the effect that the Commissioner of Agriculture, an active proponent of the Bill in the Legislature, stated while the Bill was in committee and while it was under consideration by the Legislature, that if the Bill were passed, "There won't be any out-of-state milk," and that on the day when the Bill becames a law "I will stop milk coming into the State of Alabama from Mississippi." And there is another affidavit to the effect that the Commissioner stated to members of the Alabama Dairy Producers Association that "I can make it mighty rough • • • if they fight me on my milk bill." And there are other affidavits of like effect. There is also an affidavit in the cause filed while the motion to dissolve was being heard from the Commissioner stating that the law would be enforced fairly and justly.

The Court is of opinion that statements made by those seeking the passage of a law and statements made by members of the Legislature as to what their intention was in enacting the law cannot be considered at the present hearing, and, that the Court should not be governed nor in-

fluenced by the views or opinions or threats of those seeking to enact the bill into law. While it is true there are some extraneous aids, such as debates in the convention or legislature, proclamations by the Governor, official reports of committees, and things like that which may be resorted to in the construction of a statute which is ambiguous, but the statements contained in the affidavits made exhibits to the Bill are not such things as the Court should now consider in determining the validity of the Todd Bill and the regulations made by the Commissioner in pursuance of the Act.

Coming down to the meat of the matter, the Court is of opinion that on its face the Act is valid—that it does not burden interstate commerce, does not deny the equal protection of the laws to Complainants, and the class they represent, and does not on its face otherwise deny to Complainants right secured to them by the Federal Constitution and our State Constitution.

The Court is of opinion that the Act in question involves the exercise by the State of Alabama of its police power, and especially that segment of the police power for the protection and promotion of the public health of the people of the state.

The Court might observe in passing that if upon a final hearing of this matter the proof should show that those charged by the law with its administration and enforcement are administering it in an arbitrary and oppressive manner, then the rule of law stated in the famous case, Yick Wo v. Hopkins, 118 U. S. 373, 30 L. Ed. 220, would come into play, and this rule is that: "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by the public authorities with an evil eye and an unequal hand, so as to make unjust and illegal discrimination between persons in the same cir-

cumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

So, if at a later time, upon a final hearing of this Bill for a declaratory judgment, it should be shown by the evidence that the Todd Bill is being administered "with an evil eye and an unequal hand," then those traditional remedies always available in Courts of Equity could be resorted to.

From what has been said above, it is clear that in the present condition of the record in this case that the motion to dissolve the temporary restraining orders should be granted. Yet, the Court is of opinion that the actual decree of dissolution should be withheld until the answer of the Respondent comes in, the cause is at issue, and a hearing on the merits can be had. No injury can be done by continuing the temporary restraining order in force until a final hearing can be had. On the other hand, if the temporary restraining order now be dissolved, irreparable and permanent injury might happen to the producers and distributors, and they would be without any remedy.

In a case of this kind it is the duty of the Court to balance the equities existing between the parties at the Bar, and now doing this, the Court is of opinion that the actual decree of dissolution should be withheld until the time indicated above.

The decrees will be filed with the Register at this time in accordance with the statements of law contained hereinabove.

Filed in Office 13 Day of Jan., 1956.

Geo. H. Jones, Jr., Register.

Aug 22 1957

The State of Alabama - - - - - Judicial Department

The Supreme Court of Alabama

Special Term, 1956-57

3 Div. 769

Buford James, et al.

v.

A. W. Todd, as Commissioner of Agriculture and Industries of the State of Alabama

Appeal from Montgomery Circuit Court, In Equity
Merrill, Justice.

This is an appeal from a decree of the Circuit Court of Montgomery County, In Equity, holding constitutional Act No. 570, Acts of Alabama 1955, page 1239, listed as Tit. 22, § 231 (6-13), Pocket Part, Code of 1940.

The action was brought by one Tennessee and five Mississippi milk producers. It is a class action on behalf of other milk producers in those States who engage in the business of producing and selling milk to distributors who later sell and distribute milk and milk products in the State of Alabama. The bill of complaint asks for a declaratory judgment holding Act No. 570 unconstitutional and void. In addition, the bill prayed for a temporary restraining order pending decision and for a permanent injunction. A temporary restraining order was issued by Judge Jones on the date of the filing of the bill against the Commissioner of Agriculture and Industries, restraining him from enforcing the provisions of Act No. 570. This restraining order remained in effect during the pendency of the action and until the rendering of the decision by the trial court.

After the filing of the bill, the State of Mississippi was allowed to intervene as a party complainant.

The bill was amended several times and ultimately a hearing was had on the bill as amended and the respondent's answers. Considerable testimony was taken either ore tenus or by deposition on behalf of the complainants. The respondent offered no evidence. The decree of the trial court held Act No. 570 to be constitutional and dissolved the temporary restraining order to be effective ten days after the date of the decree. Within that ten days, complainants applied for and obtained a reinstatement of the temporary restraining order from this court pending our decision in the cause.

The contentions raised by the assignments of error may be grouped as follows:

1. The Act is unconstitutional because it violates appellants' rights under the Fourteenth Amendment (the privileges or immunities, the due process and the equal protection clauses).

2. The Act is unconstitutional because it violates Section 2 of Article 4 of the Constitution of the United States, "the citizens of each State shall be entitled to all privileges and immunities of citizens of the several States."

3. The Act is unconstitutional because it violates the Commerce Clause of the Constitution of the United States.

4. The rules and regulations promulgated by the Department of Agriculture and Industries under the law are unconstitutional.

5. The court erred in refusing to permit appellants to introduce testimony by members of the Legislature to show the intent and history of the legislation, the circumstances surrounding its adoption and the evil thereby sought to be remedied.

The question presented to us is whether or not Act No. 570 is unconstitutional on its face. The only action taken by the respondent Todd, as Commissioner of Agriculture and Industries, under the Act was to promulgate the rules and regulations as provided in the Act. There has been no application or enforcement of the Act or of the rules and regulations because the Commissioner has been under injunction continuously and has been prevented from enforcing, applying or administering the Act.

Section 1 of Act No. 570 expressly states and declares its purpose:

> "The purpose of this Act is to more effectively utilize the existing agencies or departments of the State of Alabama in regulating production, processing, and distribution of milk and milk products to the end that the inhabitants of this State will be supplied with a wholesome and healthful supply of milk, cream, milk products, and by-products thereof. It is, therefore, declared to be in the public interest that milk and milk products be produced, processed, and distributed and otherwise handled under requirements as hereinafter provided for and as otherwise provided by law."

Section 3 is, in part, as follows:

> "No milk shall be shipped or transported into the State of Alabama from another state unless such milk is produced and handled under sanitary conditions no less adequate in protection of public health than milk produced in the State of Alabama and authority for shipping or transporting such milk into the State of Alabama must be authorized by permits as provided in Act No. 65, Legislature of 1955 (2nd Special Session) and must be authorized by permit by the Commissioner of Agriculture & Industries and said Com-

missioner is hereby authorized to issue or revoke such permits as have been issued by the Commissioner of Agriculture under rules and regulations adopted under the provisions of this Act providing for a method of ascertaining the conditions under which such milk shipped into the State of Alabama was produced and handled. * * *"

This is not a situation where a State statute must fall because Congress chose to exercise its paramount power to regulate commerce under that part of the Constitution of the United States which provides that the Congress shall have power to regulate commerce among the several States. Congress has not chosen to act in this field but, on the contrary, as stated in **Milk Control Board v. Eisenberg**, 306 U. S. 346, 83 L. Ed. 752, 59 Sup. Ct. 528, "* * * in matters requiring diversity of treatment according to the special requirements of local conditions, the states remain free to act within their respective jurisdictions until Congress sees fit to act in the exercise of its overriding authority. One of the commonest forms of state action is the exercise of the police power directed to the control of local conditions and exerted in the interest of the welfare of the state's citizens." In the **Eisenberg** case, the Supreme Court of the United States recognized that the milk business is essentially local and, therefore, subject to the police power of the State. Early in the history of our county, Chief Justice Marshall said, speaking of inspection laws, that such laws are "a portion of that immense mass of legislation, which embraces everything within the territory of a State, not surrendered to the general government: all of which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, * * * are component parts of this mass." **Gibbons v. Ogden**, 9 Wheat. 1, 6 L. Ed. 23.

Under its police power, the State of Alabama is authorized to enact laws designed to protect the health of its citizens and more particularly where milk is concerned because of its nutritional importance to human beings and because of its susceptibility to contamination. **Franklin v. State**, 232 Ala. 637, 169 So. 295; **Taylor v. State**, 237 Ala. 178, 186 So. 463. The Legislature may even grant to a municipality the power to provide health regulations. **Gilchrist Drug Co. v. City of Birmingham**, 234 Ala. 204, 174 So. 609; **Walker v. City of Birmingham**, 216 Ala. 206, 112 So. 823. That adequate inspection laws are imperative is obvious in view of the fact that Alabama imports from Mississippi alone approximately fifty-two million pounds of milk annually.

Prior to 1955, there was no state agency with power to enforce health regulations pertaining to the handling, processing and production of milk within the State. The standards varied from county to county and the enforcement was at a local level. In the second extraordinary session of the 1955 Legislature, Act No. 65, Acts of Alabama 1955, p. 176, approved April 13, 1955, listed as Tit. 22, § 231 (1-5), Pocket Part, Code 1940, changed this status and provided for uniformity of enforcement. Under Act No. 65, no milk producer or distributor in Alabama or out of the State was permitted to do business in Alabama without first securing a joint permit from the state and county boards of health. Act No. 570 did not become effective until October 9, 1955.

It should be noted that the quoted part of Section 3 of Act No. 570 shows that the permits required under that Act are in addition to the permits required under Act No. 65, and all of the provisions of Act No. 65 remain in full force and effect.

Appellants urge that Act No. 570 is unconstitutional in many of the respects indicated in the assignments of error

because it applies only to milk produced outside Alabama, and does not apply to local and out-of-state milk as does Act No. 65.

Appellants rely on several cases which hold in effect that one State may not, under the guise of exerting its police power, discriminate against products of other States by requiring permits under inspection laws. These cases are distinguishable from the instant case in that they deal with the administration or enforcement of their respective statutes and not with the statute as viewed in the abstract or on its face. As previously noted, there has been no enforcement of Act No. 570 or of the rules and regulations promulgated thereunder. Examples of the cases cited by appellants are:

Dean Milk Co. v. Madison, 340 U. S. 349, 9 L. Ed. 329, 71 Sup. Ct. 295, where the appellant was denied a license to sell its milk products within Madison, Wis., solely because its pasteurization plants were more than five miles away.

Hood & Sons v. DuMond, 336 U. S. 525, 93 L. Ed. 329, 69 Sup. Ct. 657, where the appellant was denied a license to operate a receiving depot where it took raw milk from farmers even though it met the requirements of the statute.

Baldwin v. Seelig, 294 U. S. 511, 79 L. Ed. 1032, 55 Sup. Ct. 497, 101 A. L. R. 55, where the appellant was denied a license as a milk dealer in New York City because it purchased milk produced in Vermont cheaper than the minimum price set for milk produced in New York State.

Miller v. Williams, 12 Fed. Supp. 236, where plaintiff, a manufacturer of ice cream in Philadelphia, was notified that his product could only be sold in Baltimore when there was a shortage of local ice cream since the contested regulation prohibited the sale of cream where it was produced from dairies more than fifty miles distant from

Baltimore except in cases of emergency (a shortage of local cream).

Brimmer v. Rebman, 138 U. S. 78, 34 L. Ed. 862, 11 Sup. Ct. 213, where Rebman was convicted under a statute which forbade the selling of fresh meat in Virginia which had been slaughtered more than one hundred miles from the place it was offered for sale. The meat Rebman sold had been slaughtered in Illinois by his employer, Armour & Co.

Minnesota v. Barber, 136 U. S. 313, 34 L. Ed. 455, 10 Sup. Ct. 862, where Barber was convicted under a Minnesota statute for selling fresh meat in that state which had been slaughtered in Illinois, the statute having the effect of limiting sales of all fresh meat to that slaughtered in Minnesota.

Best & Co. v. Maxwell, 311 U. S. 454, 85 L. Ed. 275, 61 Sup. Ct. 334, where the appellant paid under protest a tax required of one, not a regular retail merchant in the state, who displayed samples in temporary quarters.

Voight v. Wright, 141 U. S. 62, 35 L. Ed. 638, 11 Sup. Ct. 885, which was a suit to recover a license fee charged under a statute providing for inspection of flour shipped into Virginia when no inspection was required of flour manufactured in Virginia.

The reason for striking down the legislation in the foregoing cases was that the conditions imposed by the various statutes or ordinances made it practically impossible to import the goods into the State. Act No. 570 does not prevent out-of-state producers from shipping their milk into Alabama. The real requirement that they must meet is a reasonable one—that "such milk is produced and handled under sanitary conditions no less adequate in protection of public health" than milk produced in Alabama. Since Act No. 570 has never been put into opera-

tion, it cannot be said that there has been any improper application of its provisions and requirements, except as to the rules and regulations promulgated under it. The Supreme Court of the United States has said with regard to cases of this nature that "the controlling test is found in the operation and effect of the statute as applied and enforced by the State." **Gregg Dyeing Co. v. Query,** 286 U. S. 472, 76 L. Ed. 1232, 52 Sup. Ct. 631. The rules and regulations are reasonable and we do not understand that appellants seriously contend that the rules and regulations are unconstitutional if the Act is valid.

Appellants insist that Act No. 65 provides for an adequate inspection by the inspectors of the state and county health departments, and that the inspection by the Department of Agriculture and Industries of out-of-state milk producers not only discriminates against them, but is a burden on interstate commerce.

The State Health Department has only five statewide inspectors, and it is their duty to inspect both Alabama and out-of-state producers and shipments under Act No. 65 and the rules and regulations under that Act. Each of Alabama's sixty-seven counties has a county health department and sixty-four counties have sanitarians or sanitary officers who check and inspect dairies in their respective counties. The three counties without sanitarians have little or no dairy industry. The work of the county sanitarians is checked by the five statewide inspectors. It is immediately apparent that milk produced in Alabama is inspected at both the local and the statewide level and the local inspectors are on the ground and their territorial limit is sufficiently small to make the inspection adequate. According to the evidence, there is no organization in the State of Tennessee to provide local inspection. It is undisputed that some out-of-state producers were stopped from shipping milk into Alabama after the passage of Act No.

65 and Act No. 570, based upon inspections of health department inspectors.

In view of the great quantity of milk imported into Alabama, we cannot agree that the furnishing of additional inspectors to inspect conditions under which out-of-state milk is produced is either discriminatory, arbitrary or so burdensome upon interstate commerce as to render the Act in question unconstitutional. Their sole objective should be to insure that out-of-state milk which is shipped into Alabama is produced under sanitary conditions no less adequate than that produced in Alabama. Every state police statute necessarily will affect interstate commerce in some degree, but such a statute does not run counter to the grant of congressional power merely because it incidentally or indirectly involves or burdens interstate commerce. **Milk Control Board v. Eisenberg**, 306 U. S. 346, 83 L. Ed. 752, 59 Sup. Ct. 528; **Mintz v. Baldwin**, 289 U. S. 346, 77 L. Ed. 1245, 53 Sup. Ct. 611; **Asbell v. Kansas**, 209 U. S. 251, 52 L. Ed. 778, 28 Sup. Ct. 485; **Reid v. Colorado**, 187 U. S. 137, 47 L. Ed. 108, 23 Sup. Ct. 92.

The appellants seem fearful of what the Commissioner **might** do under Act No. 570. One of their main concerns centers around the provision in Section 6 of the Act which provides that permits shall be issued on a semiannual basis. Appellants insist that the permit should be on an annual basis. To more fully understand appellants' contention, it is necessary to give a brief background on the operation of the dairy businesses in question.

The supply of milk and its cost of production varies with the time of year. At the season of greatest production, the consumer demand is the lowest. In view of these facts, a system has been worked out which will insure that the distributor gets enough milk during the scarce season to supply the public demand, and in return that the producer, during the flush season or season of greatest milk produc-

tion, will have a market for his milk and receive a fair price therefor. All the producer-complainants are on a system called the "plant usage basis." This means that for each producer, there is established a quota (i. e., that amount of milk for which the producer will be paid the top price). This quota is established as the ratio of the amount of milk the producer sells to the distributor to the total amount of milk purchased by the distributor during the base or quota making period—September through February, when the supply of milk is scarcest. This ratio is then applied for the next twelve months to the distributor's sales of fluid milk for human consumption (called Class I sales). For example, suppose the distributor purchases a total of 100,000 pounds of which producer A supplies 10,000 pounds—A's quota is ten per cent. That means that for the next year, beginning March 1st, the producer receives the base price for ten per cent of the Class I sales made by the distributor to whom he sells his milk. Assume that Class I sales for any pay period (which is usually two weeks) are 100,000 pounds and producer A furnished 15,000 pounds. He receives the base price for 10,000 pounds and the surplus price for 5,000 pounds. Surplus milk is that used for the production of milk by-products, such as cheese, butter and ice cream. It is sufficient to say that a substantially less price is paid for this milk even though it may be the exact quality of milk which is used for drinking purposes. (For a similar explanation, see Attorney General Quarterly Reports, Volume 67, April-June, 1952, pages 47 and 48.) The theory behind this system of establishing quotas is to stabilize the economy of the milk business.

Appellants introduced testimony to the effect that it is not possible for a producer to stay in business as a producer of Grade A milk unless he is able to make his calculations on the basis of an annual quota. Conceding this, we fail to see the logic of appellants' arguments that since the permit

under the Act is only of six months' duration that it will necessarily keep them from shipping milk into Alabama. The producer can still make his calculations on an annual basis and as long as the producer complies with the health regulations of Alabama, the Commissioner of Agriculture and Industries must continue to issue him a permit every six months. As to the initial permit, Section 7A of the Act provides that anyone holding a permit under the authority of Act No. 65 shall be entitled to receive one from the Commissioner, and the Commissioner shall have no authority to revoke such permit until an inspection of the premises has been made. The permit can only be revoked for violations of rules and regulations promulgated under the Act; the revocation must be in writing and any person deeming himself aggrieved by any action of the Commissioner under the Act, has a right to appeal to the Circuit Court of Montgomery County. The mere fact that the Commissioner **might** refuse to reissue a permit does not present this court with a justiciable question. In **Highland Farms Dairy, Inc., v. Agnew**, 300 U. S. 608, 81 L. Ed. 835, 57 Sup. Ct. 549, a case involving the validity of a milk control board, it was said:

> "• • • One who is required to take out a license will not be heard to complain, in advance of application, that there is danger of refusal (citing authorities). He should apply and see what happens."

In **Smith v. Cahoon**, 283 U. S. 553, 75 L. Ed. 1264, 51 Sup. Ct. 582, the Supreme Court declared:

> "• • • The appellant did not apply for a certificate, and the principle is well established that when a statute, valid upon its face, requires the issue of a license or certificate as a condition precedent to carrying on a business or following a vocation, one who is within the terms of the statute, but has failed to make the required application, is not at liberty to complain be-

cause of his anticipation of improper or invalid action in administration. * * *"

The principle is otherwise stated—"* * * We are not justified in declaring a statute unconstitutional merely because it offers an opportunity for abuses. * * *" **State ex rel. Hannah v. Armijo**, 38 N. M. 73, 28 P. 2d 511.

This court has, on many occasions, stated its position with regard to the interpretation of legislative enactments. We can only learn what the Legislature intended by what it has said, and have no right to stray into mazes of conjecture for an imaginary purpose in construing a statute, and where the language of a statute is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction. **State v. Bay Towing & Dredging Co.**, 264 Ala. 187, 85 So. 2d 890. Even when construction is necessary, our cases reaffirm the principle that where a statute is capable of two constructions, one which renders it valid and the other invalid, the construction which will uphold its validity must be adopted. **Norton v. Lusk**, 248 Ala. 110, 26 So. 2d 849, 4 Ala. Dig., Constitutional Law, Key 48. The principle is universal that legislation must be taken to be valid unless the contrary is made clearly to appear. **Reid v. Colorado**, 187 U. S. 137, 47 L. Ed. 108, 23 Sup. Ct. 92; **State ex rel. Wilkinson v. Murphy**, 237 Ala. 332, 186 So. 487. The principle is stated in the latter case, by Justice Gardner, as follows:

"Or to state it differently, all that the legislature is not forbidden to do by the organic law, state or federal, it has full competency to do. And in passing upon the constitutionality of a legislative act, the courts uniformly approach the question with every presumption and intendment in favor of its validity, and seek to sustain rather than strike down the enactment of a co-ordinate branch of the government. All of which

is embraced in the simple statement that it is the recognized duty of the court to sustain the act unless it is clear beyond a reasonable doubt that it is violative of the fundamental law. Gray v. Johnson, 235 Ala. 405, 179 So. 221; Walden v. City of Montgomery, 214 Ala. 409, 108 So. 231; Miller v. Marx, 55 Ala. 322."

Appellants have well stated the proposition in their brief as follows:

"There is no question but that in establishing, under the police power, a system for the inspection and control of milk, there is permitted, in the form of control, a difference as between milk produced in Alabama and milk produced in our neighboring states of Mississippi and Tennessee or in the Chicago milk shed, and brought into the State of Alabama in interstate commerce. The validity of the form of such control as applied to out-of-state milk depends on whether it is a reasonable system established actually as a safeguard of the public health or a system the intent and effect of which prevents importation of out-of-state milk in competition with the local supplies. The former is upheld, the latter stricken down."

We think we have shown by the foregoing that the Act, on its face, is reasonable and that the intent and the effect of the Act, on its face, is not to prevent the importation of out-of-state milk in order to eliminate competition with local supplies.

In holding that Act No. 570 is not violative of appellants' constitutional rights, we wish to make it clear that while we do not agree with appellants' construction of a part of Act No. 570, we also warn that an attempted enforcement of the Act under such a construction would render such action under the Act unconstitutional. The pertinent part of appellants' brief states:

"Act No. 65 provides that permits from the Health Department must be secured by the out-of-state producer who engages in the **production of milk for shipment** into the state; under Act No. 65 producer-complainants can qualify and secure the necessary Act No. 65 permit. But Act No. 570 (the Todd bill) does not provide for a permit for **production for shipment**, but limits its permits to the **actual shipment and transportation.** Under Act No. 570, therefore, the producer who does not ship, but sells his milk to the distributor out of state, cannot secure a Todd permit, Todd cannot issue one; yet unless the producer has a permit, the milk in the shipment of which his is a part is to be seized and condemned. No distributor can ship or transport it into Alabama, hence no distributor can buy it (Act No. 570, Code of 1940, Tit. 22, Secs. 231 6-13, inc., Pocket Part). Act No. 570 is, therefore, an absolute barrier to the sale in Alabama of milk produced by producer-complainants out-of-state."

We cannot agree that Act No. 570 limits its permits to the actual shipment and transportation of milk, rather, we think the Act and the rules and regulations promulgated thereunder contemplate the issuance of a permit to any out-of-state producer whose milk is shipped or transported into Alabama.

The last grouping of the assignments of error relates to the action of the trial court in refusing to permit the introduction of testimony of four members of the Legislature concerning the consideration and passage of Act No. 570 by that body.

The questions to and the answers of the witnesses clearly show an attempt to have them express their conclusions as to the motive, purpose and intent of the Legislature in passing the Act, and to show that such were different from

that expressed in Section 1 of the Act. In **Morgan County v. Edmondson**, 238 Ala. 522, 192 So. 274, this court said:

> "It is of course a well settled rule that in determining the validity of an enactment, the judiciary will not inquire into the motives or reasons of the legislature or the members thereof. 16 Corpus Juris Secundum, Constitutional Law, § 154, p. 487. 'The Judicial department cannot control legislative discretion, nor inquire into the motives of legislators.' City of Birmingham v. Henry, 224 Ala. 239, 139 So. 283. * * *"

See also, **May v. Head**, 210 Ala. 112, 96 So. 869. The following from **Wiseman v. Madison Cadillac Co.**, 191 Ark., 88 S. W. 2d 1007, 103 A. L. R. 1208, is applicable:

> "The appellee introduced Senator E. B. Dillon, a member of the Fiftieth General Assembly, who testified with reference to holding meetings and what the purpose of the amendment was, and testified at length about the passage of the bill through the Senate. He testified about his understanding of the intention of the Legislature and the intention of the committee in adopting section 15 as it now appears in the act.
>
> "The court held that the evidence offered was incompetent, and therefore did not consider it. * * *
>
> "The chancery court was correct in holding the evidence introduced by appellee incompetent.
>
> "The intention of the Legislature, to which effect must be given, is that expressed in the statute, and the courts will not inquire into the motives which influenced the Legislature or individual members in voting for its passage, nor indeed as to the intention of the draftsman or of the Legislature so far as it has not been expressed in the act. So in ascertaining the meaning of a statute the court will not be governed or influenced by the views or opinions of any or

all of the members of the Legislature, or its legislative committees or any other person."

See 2 Sutherland, Statutory Construction, § 5011, 3rd Ed.; 82 C. J. S., Statutes, § 354, p. 745.

The trial court correctly sustained the objections to the testimony of the members of the Legislature.

It follows that the decree of the lower court should be affirmed.

Affirmed.

Livingston, C. J., Simpson and Goodwyn, JJ, concur.

Aug. 22, 1957.

The State of Alabama—Judicial Department

The Supreme Court of Alabama

Special Term, 1956-57

3 Div. 769-A

Southern Dairies, Inc., et al.

v.

A. W. Todd, as Commissioner
of Agriculture and Industries
of the State of Alabama

Appeal from Montgomery Circuit Court, In Equity
Merrill, Justice.

This is an appeal from a decree of the Circuit Court of Montgomery County, In Equity, holding constitutional Act No. 570, Acts of Alabama 1955, page 1239, listed as Tit. 22, § 231 (6-13), Pocket Part, Code of 1940.

This action was brought by five milk distributing companies doing business in, and with plants located within the State of Alabama, which distributing companies purchase milk from producers outside of the State of Alabama, including the out-of-state producers who are complainants in the case of **Buford James et al. v. Todd, as Commissioner of Agriculture and Industries,** 3 Div. 769, this day decided.

The pleadings in the two cases are essentially the same. A motion was made to consolidate the two cases, agreed to, and by decree, the cases were consolidated.

On the authority of the **James** case, we hold that the ruling of the trial court was correct in holding that Act No. 570, supra, was a constitutional enactment.

Affirmed.

Livingston, C. J., Simpson and Goodwyn, JJ, concur.

APPENDIX B.

Act No. 570 H. 377—Hall, Dawkins

AN ACT.

Regulating further the testing, inspecting and grading of milk, cream, and milk products with respect to the public health; prescribing certain duties and authority of the Department of Agriculture and Industries, the Commissioner of Agriculture and Industries, and the State Board of Health; providing for the cooperation and exchange of information between the Department of Agriculture and Industries, the State Board of Health, and the Alabama State Milk Control Board in the making of any surveys, investigations, and inquiries made for the purpose of determining whether or not, or in what manner, the production, processing, and distributing of milk, cream, and milk products may affect the public health; prescribing conditions and requirements for milk transported into Alabama from other states; and prescribing a penalty for violations of this Act.

Be It Enacted by the Legislature of Alabama:

Section 1. **Declaration of Purpose**: The purpose of this Act is to more effectively utilize the existing agencies or departments of the State of Alabama in regulating production, processing, and distribution of milk and milk products to the end that the inhabitants of this State will be supplied with a wholesome and healthful supply of milk, cream, milk products, and by-products thereof. It is, therefore, declared to be in the public interest that milk and milk products be produced, processed, and distributed and otherwise handled under requirements as hereinafter provided for and as otherwise provided by law.

Section 2. **Cooperation Between Departments**: There shall be the fullest cooperation and in the making available

of information between the State Department of Agriculture and Industries, the State Board of Health, and the Alabama State Milk Control Board in the making of surveys, investigations, and inquiries to be made for the purpose of determining whether, or in what manner, the production, processing, and distribution of milk, cream, and milk products may affect the public health. Whenever the findings in the report of any survey, investigation, or inquiry made by the Department of Agriculture and Industries, the State Board of Health, or the Alabama State Milk Control Board show any hazard to public health existing incident to the production, processing, or distribution of milk, cream, or milk products, the State Board of Health shall take such action as may be necessary to remove such hazard; the Commissioner of Agriculture and Industries may also take such action as may be necessary to remove such hazard under authority provided in Sections 3 and 5 of this Act. Provided, that nothing contained in this Act shall limit the authority of the State Board of Health to take immediate action when it appears necessary in the interest of public health. Provided, further, that nothing contained in this Act shall be construed to limit or affect the authority and jurisdiction conferred on the Alabama State Milk Control Board under the provisions of Chapter 7 of Title 22, Code of Alabama (1940) and any amendments thereto.

Section 3. **Milk Transported Into Alabama:** No milk shall be shipped or transported into the State of Alabama from another State unless such milk is produced and handled under sanitary conditions no less adequate in protection of public health than milk produced in the State of Alabama and authority for shipping or transporting such milk into the State of Alabama must be authorized by permits as provided in Act No. 65, Legislature of 1955 (2nd Special Session) and must be authorized by permit by the Commissioner of Agriculture and Industries and said Commis-

sioner is hereby authorized to issue or revoke such permits as have been issued by the Commissioner of Agriculture under rules and regulations adopted under the provisions of this Act providing for a method of ascertaining the conditions under which such milk shipped into the State of Alabama was produced and handled. Any milk shipped into the State of Alabama in violation of the provisions of this section or rules and regulations promulgated under this Act shall be suspended from sale, seized, and condemned in accordance with the procedure set forth under Article 33, Title 2, Code of Alabama 1940.

Section 4. **State and Local Boards of Health**: Nothing contained in this Act or rules and regulations promulgated thereunder shall be construed to invade the domain of the public health laws, regulations, or ordinances, nor restrict the powers and authority of the State Board of Health, the County Boards of Health or any city or town in the State of Alabama, but is supplemental thereto for the accomplishment of this Act.

Section 5. **Authority and Duty of the Commissioner**: The Commissioner of Agriculture and Industries, inspectors, employees, and agents of the Department of Agriculture and Industries, shall have power and authority to enter upon any premises where milk being or having been shipped or transported into the State of Alabama is processed, bottled, collected, cooled, or otherwise handled, or to stop and inspect any truck or other vehicle transporting milk into this State except as hereinafter provided to be sold or offered for sale in this State and to make such investigations, examinations, or inspections as may be necessary to determine whether such milk, cream, milk products, or by-products thereof being shipped or transported into this State are produced, distributed, processed, or otherwise handled in accordance with the requirements of this Act and rules and regulations promulgated thereunder. Such power and authority shall also include authority to exam-

ine records of any milk processing establishment for the purpose of determining the origin or place of production of milk handled at such establishment to the end that it may be determined whether such milk is produced and handled in accordance with the requirements of this Act. All information received by the Commissioner of Agriculture and Industries or any employee, official, or agent of said Commissioner as a result of the examination of records of any milk process establishment shall be regarded and considered confidential and it shall be unlawful for any official, employee, or agent of the Commissioner of Agriculture and Industries to reveal any of said confidential information. It shall be unlawful for any person to resist, prevent, or refuse to allow the Commissioner of Agriculture and Industries, inspectors, employees, or agents of the Department of Agriculture and Industries entrance or access to the premises as authorized hereunder or to otherwise interfere or prevent such official or employee from carrying out the provisions of this Act.

Section 6. **Rules and Regulations**: The Commissioner of Agriculture and Industries, with the approval of the State Board of Agriculture and Industries, is authorized to promulgate and adopt rules and regulations to effectuate the evident intent and purposes of this Act. Provided, however, that all rules and regulations promulgated hereunder shall be in writing and said rules and regulations shall become effective thirty days after a copy of the same has been posted in the office of the Commissioner. The Commissioner shall mail a copy of all such rules and regulations to each holder of a permit issued hereunder addressed to such permit holder at his last known address. No rule or regulation under the authority of this Act shall become effective prior to the expiration of thirty days from the date of its promulgation and posting as aforesaid. Permits issued pursuant to this Act shall be issued on a semi-annual basis and may be suspended or revoked by the

Commissioner of Agriculture and Industries for any good and sufficient cause.

Section 7. **Penalty**: Any person, firm, corporation, or association who shall violate any of the provisions of this Act or who fails to perform any duty or requirement imposed by the provisions of this Act or who violates any rules or regulations duly promulgated thereunder shall be guilty of a misdemeanor and punished as now prescribed by law for such offenses.

Section 7A. The Commissioner shall issue to each person, firm, or corporation who at the effective date of this Act holds a permit issued under the authority of Act No. 65 of the Second Special Session of the Legislature of 1955, a permit for a semi-annual period as authorized by this Act, upon the application of such person, firm, or corporation; and the Commissioner shall have no authority to revoke a permit so issued to any such person, firm, or corporation, until an inspection of the premises has been made by the Commissioner or by an employee of the Department of Agriculture and Industries. Revocation must be in writing and no permit shall be revoked except for violations of rules and regulations promulgated under the provisions of this Act. Any revocation of a permit shall not become effective until three days after the order of revocation has been delivered to the permit holder. Delivery of the notice may be made by registered or certified mail as provided by law for service in equity cases.

No milk in transit can be stopped, seized, or condemned by the Commissioner unless said milk has been produced, processed, or delivered by a person, firm, or corporation who does not hold a permit under the provisions of this Act or by a licensee under this Act whose permit has been previously revoked for cause.

Any person affected by any order or action of the Commissioner of Agriculture authorized by this Act, who deems

himself aggrieved by any such order or action, may within 15 days after receiving notice of such order or action have such order or action reviewed by appeal to the Circuit Court of Montgomery County, Alabama, by filing a petition setting out the specific order or action or any part thereof whereby said person deems himself aggrieved and shall present to said Court such testimony as shall be deemed necessary to support such grievance. All such petitions shall be given preferred settings and shall be heard by the Court as speedily as possible. The appeal shall be perfected upon posting of a bond for costs of the appeal, accompanied by the petition.

Section 8. **Severability**: The provisions of this Act are severable. If any of the provisions of this Act, or the application thereof to any person or circumstances is declared invalid or unconstitutional, such declaration shall not affect other provisions or applications of the Act and the part that remains.

Section 9. **Repeal of Conflicting Laws**: All laws and parts of laws in conflict herewith are hereby expressly repealed.

Section 10. **Effective Date**: This Act shall become effective on a date thirty (30) days after its passage and approval by the Governor, or thirty (30) days after its otherwise becoming a law.

Act No. 65 S. 12—Givhan

AN ACT

To provide for the protection of the Public Health and establish health standards and regulations governing the production, processing, handling, and distribution of milk for human consumption; requiring milk producers, processors, handlers, and distributors to obtain permits issued

by the State Board of Health in conjunction with county boards of health; prescribing penalties.

Be It Enacted by the Legislature of Alabama:

Section 1. It shall be unlawful for any person, firm, or corporation within the State of Alabama to engage in the production, processing, handling, or distribution of milk intended for sale for human consumption in this State without first securing a joint permit from the State Board of Health and the county board of health in the county where the milk is produced, processed, handled and distributed. Permits shall be issued under such rules and regulations as the State Board of Health and county board of health may prescribe, and shall be issued jointly by the State Board of Health and County Board of Health, to any person, firm or corporation complying with the health regulations and standards prescribed by said board.

Section 2. It shall be unlawful for any person, firm, or corporation outside of the State of Alabama to engage in the production, processing, handling, or distribution of milk for shipment into the State of Alabama for human consumption in this State without first securing a joint permit from the State Board of Health and the County Board of Health in the county where the milk is distributed or received for processing, handling, or distribution. Permits shall be issued under such rules and regulations as the State Board of Health and county board of health may prescribe, and shall be issued jointly by the State Board of Health, and county board of health, to any person, firm, or corporation complying with the health regulations and standards prescribed by said board.

Section 3. Permits issued pursuant to this Act shall be issued on an annual basis, and may be suspended or revoked by the State Board of Health in conjunction with the county board of health issuing the permit for any good

and sufficient cause, after written notice of the cause has been given the permit holder.

Section 4. The State Board of Health shall provide for the issuance of temporary permits for spot shipments of milk at such time or times as supplemental supplies of milk are needed in a particular county or area. Temporary permits shall be issued by the State Board of Health in conjunction with the county board of health of the county affected by the temporary shortage.

Section 5. Any person, firm, or corporation who violates this Act shall be guilty of a misdemeanor, and upon conviction shall be punished as prescribed by law.

Section 6. All laws or parts of laws which conflict with this Act are repealed.

Section 7. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Code of Alabama, 1940, Title 22, Sections 6 and 7

Section 6. Sole control of public health vested in state and county boards of health.—No local board of health, or other executive body for the exercise of public health functions, other than the county board of health, shall be established or exist in any county or municipality. Nor shall any municipality have a municipal health officer or other like officer. Nor shall any board, body, or organization, or any official or person, acting or claiming to be under any federal authority or acting without claim of federal or state authority, engage in any public health work, except under the supervision and control of the state board of health.

Section 7. State board of health; authority and jurisdiction.—The state board of health shall have authority and jurisdiction: (1) To exercise general control over the enforcement of the laws relating to public health. (2) To investigate the causes, modes of propagation, and means of prevention, of diseases. (3) To investigate the influence of localities and employment on the health of the people. (4) To inspect all schools, hospitals, asylums, jails, almshouses, theatres, opera houses, courthouses, churches, public halls, prisons, stockades where convicts are kept, markets, dairies, milk depots, slaughter pens or houses, railroad depots, railroad cars, street railroad cars, lines of railroads and street railroads, including the territory contiguous to said lines, industrial and manufacturing establishments, offices, stores, banks, club houses, hotels, rooming houses, residences, and other places of like character, and whenever insanitary conditions in any of these places, institutions, or establishments, or conditions prejudicial to health, or likely to become so, are found, proper steps shall be taken by the proper authorities to have such conditions corrected or abated. (5) To examine the source of supply, tanks, reservoirs, pumping stations, and avenues of conveyance of drinking water, and whenever these waters are found polluted, or conditions are discovered likely to bring about their pollution, proper steps shall be taken by the proper authorities to improve or correct conditions. (6) To adopt and promulgate rules and regulations providing proper methods and details for administering the health and quarantine laws of the state, which rules and regulations shall have the force and effect of law and shall be executed and enforced by the same courts, bodies, officials, agents, and employees as in the case of health laws, and a quorum, as provided for by the constitution of the medical association of the State of Alabama shall be competent to act when written approval of any measure has been obtained from each of the other

members of the board. (7) To exercise supervision and control over county boards of health and over county health officers and county quarantine officers in the enforcement of the public health laws of the state in their respective counties and whenever any such county board of health, county health officer or county quarantine officer shall fail or refuse to discharge its or his duties said duties may be discharged by the state board of health until proper arrangements are made to insure their discharge by said county board of health or said county health officer, or said county quarantine officer, as the case may be. (8) To act as an advisory board to the state in all medical matters and matters of sanitation and public health.

Regulations Governing the Production, Handling, Distribution and Sale of Milk and Certain Milk Products

Alabama State Board of Health,
Montgomery, Alabama

Introduction.

The following regulations governing the grading of milk supplies consist essentially of the U. S. Public Health Service Milk Ordinance (1950 Edition), modified specifications so as to conform to long established Alabama State Department of Health Policy.

D. G. Gill, M. D.,
State Health Officer.

Alabama State Board of Health Regulations Governing the Production, Handling, Distribution and Sale of Milk and Certain Milk Products.

Under and by virtue of authority vested in it by the Legislature of Alabama, Title 22, Chapter 1, Sections 7 and 85, Code of Alabama 1940, the State Board of Health does hereby promulgate the following rules and regulations governing the grading, handling, and sale of milk and certain milk products intended for human consumption in the fluid state, regulating the construction of new and the alteration of remodeled dairy farm and milk plant structures, authorizing the registration of pasteurizing equipment operatives, and fixing penalties, the application of which regulations is limited as hereinafter provided.

Intent and Application.

It is the intent of the State Board of Health in adopting these regulations to advance uniformity in milk quality control throughout the State, and to facilitate the application of safeguards of known efficiency to the production and pasteurization of milk. It is not intended that ordinances identical with or closely parallel to these regulations, may not be adopted, but it is intended that these regulations shall establish minimum requirements uniformly on a State-wide basis and shall minimize the need for the adoption of municipal ordinances and county board of health regulations; further, it is intended that these regulations shall establish a uniform grade of milk throughout Alabama.

It shall be the duty of the county health officers to encourage repeal of obsolete milk legislation and to encourage the application of these regulations, in their respective counties. Section 18 of these regulations sets out their application.

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SECTION 2.

Sale of Adulterated or Misbranded Milk or Milk Products Prohibited.

No person shall, within any municipality and its police jurisdiction or unincorporated area in which these regulations have been declared to be in effect, produce, sell, offer or expose for sale, or have in possession with intent to sell, any milk or milk product which is adulterated, misbranded or ungraded. It shall be unlawful for any person, elsewhere than in a private home, to have in possession any adulterated, misbranded, or ungraded milk or milk product. The health officer is hereby authorized and directed to prohibit the storage, sale, delivery and distribution of improperly labeled, adulterated, impure, insanitary and unwholesome milk and milk products by condemnation, seizure, confiscation, summary destruction or denaturing.

SECTION 3.

Permit Prescribed.

It shall be unlawful for any person to bring into, send into, or receive into any municipality or unincorporated area in which these regulations have been declared to be in effect, for sale, or to sell or offer for sale therein, or to have in storage where milk or milk products are sold or served, any milk or milk product defined in these regulations, who has not applied for and received an unrevoked written permit issued annually from the health officer of the said county, in which such municipality or unincorporated area is located, and on whose delivery vehicle or vehicles there does not appear, in a conspicuous place the permit number in figures legible and easily read.

It shall also be unlawful for any person holding such a permit to receive at any dairy farm or milk plant under his

control any milk or milk product, to be used in or with any milk or milk product subject to grading under the terms of these regulations, unless a permit from the health officer for the sale of such milk or milk product in the said county is held by the producer, milk plant operator, or distributor making the initial or intermediate sale. Only a person who complies with the requirements of these regulations shall be entitled to receive and retain such a permit. Such permit may be revoked by the health officer upon any violation by the holder of any of the provisions of these regulations, or in any emergency when, in the judgment of the health officer, the milk or milk product in question has become a public health menace; provided, that the holder of said permit shall, after complying with such revocation have the right to appeal to the board of health of the county for the sale of milk in which the said permit was revoked.

* * * * * * * *

SECTION 5.

Inspection of Dairy Farms and Milk Plants for the Purpose of Grading or Re-grading Prescribed.

Prior to the issuance of a permit and at least once during each three (3) months the health officer shall inspect all dairy farms and milk plants the milk and/or milk products from which are intended for consumption, and which are subject to the provisions of these regulations. In case the health officer discovers the violation of any item of sanitation prescribed in Section 7, for the grade of milk being currently produced at any dairy farm or milk plant, he shall make a second inspection of the said dairy farm or milk plant after a lapse of such time as he deems necessary for the correction of the defect or violation discovered; but not before the lapse of three days. The findings of the second inspection shall then be used in determining the necessity for the suspension of the permit.

The violation of the same item of Section 7 of these regulations on two consecutive inspections, or of any items of that section on three successive inspections, shall then be used in determining the necessity for the suspension of the permit.

One copy of the inspection report shall be posted by the health officer in a conspicuous place upon an inside wall of the dairy farm or milk plant buildings, and said inspection report shall not be removed or defaced by any person except the health officer. Another copy of the inspection report shall be filed with the records of the county health department.

SECTION 6.

The Examination of Milk and Milk Products.

During each six months period at least four samples of milk and cream from each dairy farm and each milk plant shall be taken on separate days and examined by the health officer. Samples of milk and milk products shall be examined by the health officer as often as he deems necessary, to insure the distribution of safe and sanitary milk and milk products. Samples may be taken by the health officer at any time prior to the final delivery of the milk or milk products. Samples of milk and milk products from stores, cafes, soda fountains, restaurants, and other places where milk or milk products are sold shall be examined as often as the health officer may require. All proprietors of such places shall furnish the health officer, upon his request, with the names of all distributors from whom their milk and milk products are obtained. Bacterial plate counts, direct microscopic counts, reduction tests, coliform determinations, phosphatase tests, and other laboratory tests shall conform to the procedures in the current edition of "Standard Methods for the Examination of Dairy Prod-

acts" recommended by the American Public Health Association and the Association of Official Agricultural Chemists. Examinations may include such other chemical and physical determinations as the health officer may deem necessary for the detection of adulteration. Bio-assays of the Vitamin D content of Vitamin D Milk shall be made when required by the health officer in a laboratory approved by him for such examinations.

* * * * * * * *

SECTION 8.

Grades of Milk and Milk Products Which May Not Be Sold.

From and after the date on which these regulations take effect no milk or milk products shall be sold to the final consumer or to restaurants, soda fountains, grocery stores, or similar establishments except Grade A Pasteurized, Grade A Raw. Provided: that when any milk distributor fails to qualify for one of the above grades the health officer is authorized to suspend his permit and/or institute court action.

SECTION 9.

Reinstatement of Permit.

Any producer or distributor of milk or milk products, whose permit has been suspended may at any time make application for the reinstatement of his permit.

Upon receipt of a satisfactory application for reinstatement a permit based on correction of a violation of any bacteriological or cooling temperature standard, the health officer shall take further samples at the rate of not less than two per week, and shall approve the application upon compliance with Grade A requirements as determined in

accordance with Section 6; Provided: That if samples are not available because of suspension of permit to operate, or for other reasons, the health officer may issue a temporary permit upon satisfying himself by inspection of the facilities and the operating methods that the conditions responsible for the violation have been corrected, with final reinstatement of permit conditional upon subsequent bacteriological or temperature findings.

In case the permit suspension was due to a violation of an item other than bacteriological standards or cooling temperature, the said application must be accompanied by a statement signed by the applicant to the effect that the violated item of the specifications has been conformed with. Within one (1) week of the receipt of such an application and statement, the health officer shall make a reinspection of the applicant's establishment and thereafter as many additional reinspections as he may deem necessary to assure himself that the applicant is again complying with Grade A requirements, and, in case the findings justify, shall reinstate the permit.

* * * * * * *

SECTION 11.

Regulation of the Distribution of Milk and Milk Products From Points Beyond Local Jurisdiction.

No milk or milk products produced, pasteurized, or processed in one county may be sold, offered for sale, or distributed in any other county unless a permit for such sale or distribution be obtained from the health officer as provided in Section 3 of these regulations. Such permit shall be predicated upon an application of the distributor to the county health officer and upon a written statement from the State Health officer to the county health officer that

the milk or milk products in question are in compliance with the regulations contained herein applying to such products. The containers in which said milk or milk products are distributed shall be labeled in accordance with the provisions of Section 4 of these regulations.

Milk or milk products produced or originating from sources without the State shall be certified to the County Health Officer in the same manner as provided above and only milk or milk products from sources so certified shall be considered by the county health officer in the issuance of permits.

Following the issuance of such a permit, arrangements for continuing the routine inspection and grading of such milk or milk products shall be perfected by the State Health Officer. Such milk and milk products shall also be subject to grading on the basis of average temperature readings and bacterial content upon receipt or during distribution. In the face of a decided milk shortage the county health officer may approve for a temporary period the distribution of milk or milk products the quality and grade of which he has reason to believe to be equivalent to that currently produced and distributed under his supervision.

* * * * * * *

State of Alabama.

Alabama State Milk Control Board.

North Alabama Milk Shed.

In the matter of establishing long term policies of the Board relating to the Dairy Industry.	Standing Order No. I-5.

Be It Remembered that pursuant to the authority vested in it by Title 22, Chapter 7, Sections 205 to 231, inclusive, Code of Alabama of 1940, and after giving notice as re-

quired by law and the rules of the Board, the Alabama State Milk Control Board regularly and legally called and held public hearings in the several milk sheds throughout the State.

* * * * * * * *

Now, Therefore, by Reason of the Foregoing, it is, by the Board, Ordered, Adjudged and Decreed as follows:

(1) Each producer licensee of the Board shall during the months of September through February, inclusive, of each year build or establish a quota with the licensee to whom he sells his milk. Quotas shall be established based on either one of the two following methods: (a) Plant Usage or (b) Winter Production is Summer Base.

Plant Usage:

When the deliveries of milk from producers exceed the Class I sales in any period, the determination of Base and Surplus shall be in accordance with quotas currently established and in force.

In the establishment of quotas, all milk delivered by a producer to a distributor or to a producer-distributor between the first day of September and the last day of February, both dates inclusive, shall go toward building such producer's base or quota at the purchaser's plant to whom said producer delivers his milk. Each producer's quota of base milk shall be the ratio his deliveries of milk during the Base Period bear to the total receipts of milk of the purchaser during the Base Period to whom he is selling his milk. Any quota so earned by a producer shall be his quota beginning the first day of March and through the last day of February the following year.

When the quantity of milk purchased during any pay period from all producers by a producer-distributor or distributor shall not exceed the quantity of

purchaser's Class I milk sales for such period, each producer shall be paid Class I price for all milk purchased during such pay period.

Winter Production Is Summer Base:

For those plants using the winter production is summer base quota plan, all deliveries of milk from producers to purchasers during the base building months (namely, September through the following February) shall be paid for as Class I milk.

During the non-base building months (namely, March through August each year) producers will be paid Class I price for that number of pounds of milk which the producer delivered to his purchaser during the base-building months. This daily average shall be computed by dividing the total number of pounds of milk delivered during the entire base-building period by the number of days in the base-building period.

* * * * * * *

Done and Ordered at Montgomery, Alabama, this 17th day of March, 1953.

Alabama State Milk Control Board,
By Mrs. T. L. Bear, Jr.,
Chairman,
Hugh W. Brown, Sr.,
W. H. Knight,
Charles E. Scott,
E. L. Turner, Jr.,
Frank M. Stewart,
Ex-Officio Member.

* * * * * * *

State of Alabama.

Alabama State Milk Control Board.

In the matter of defining the method for the allocation of quotas. } Official Order No. 356.

* * * * * * * *

Now, Therefore, by reason of the foregoing, it is by the Board Ordered, Adjudged and Decreed as follows:

A. Quotas can be held only by individual wholesale producer licensees of the Board with the following exception: A distributor licensee, or a producer-distributor licensee, to recompense his plant for the cost of supplemental shipments received during a base-building period, may hold what is known as a "plant quota" under the following regulations:

* * * * * * * *

Done and Ordered at Montgomery, Alabama, this the 9th day of February, 1955.

Alabama State Milk Control Board,
By Hugh W. Brown, Sr.,
Chairman,
E. Donald Hall,
W. H. Knight,
Miss Margaret McFall
(Abstained),
E. L. Turner, Jr.,
.....
Ex-Officio Member.

* * * * * * * *

State of Alabama.

Alabama State Milk Control Board.

* * * * * * *

In the matter of establishing uniform minimum and maximum prices for fluid milk in its various forms and usages. * * *	Official Orders Nos. 339-344.

* * * * * * *

Policy of the Board Regarding Out-of-State Supply.

Since the purpose of the Alabama Milk Control Act is the furtherance of an adequate supply of pure and wholesome milk for the consuming public, and

Since its purpose, also, is the stabilizing of the industry within this State, and

Since the producers of the State have voluntarily offered to reduce their price to become competitive, and

Since the Board, having considered the testimony, feels that the evidence as to costs is based on actual costs of efficient operations, and

Since the distributors have, under oath, testified that they prefer a local and stable source at a competitive price, and

Since the distributors also testified they would decrease their out-of-state supplies if there was an in-state supply at a competitive price,

Now, Therefore, by Reason of the Foregoing, It Is by the Board, Ordered, Adjudged and Decreed as follows:

1. Large amounts of unmarketed Alabama-produced milk within the State while importation continues is detrimental to the economy of the State.

2. Such a situation is in violation of the intent of the Milk Control Act.

3. This situation will be checked by the Board and any increase in out-of-state shippers while there is a supply within the State shall be considered a violation of the orders of the Board, and any such violator shall be called before the Board to show cause why his license should not be revoked.

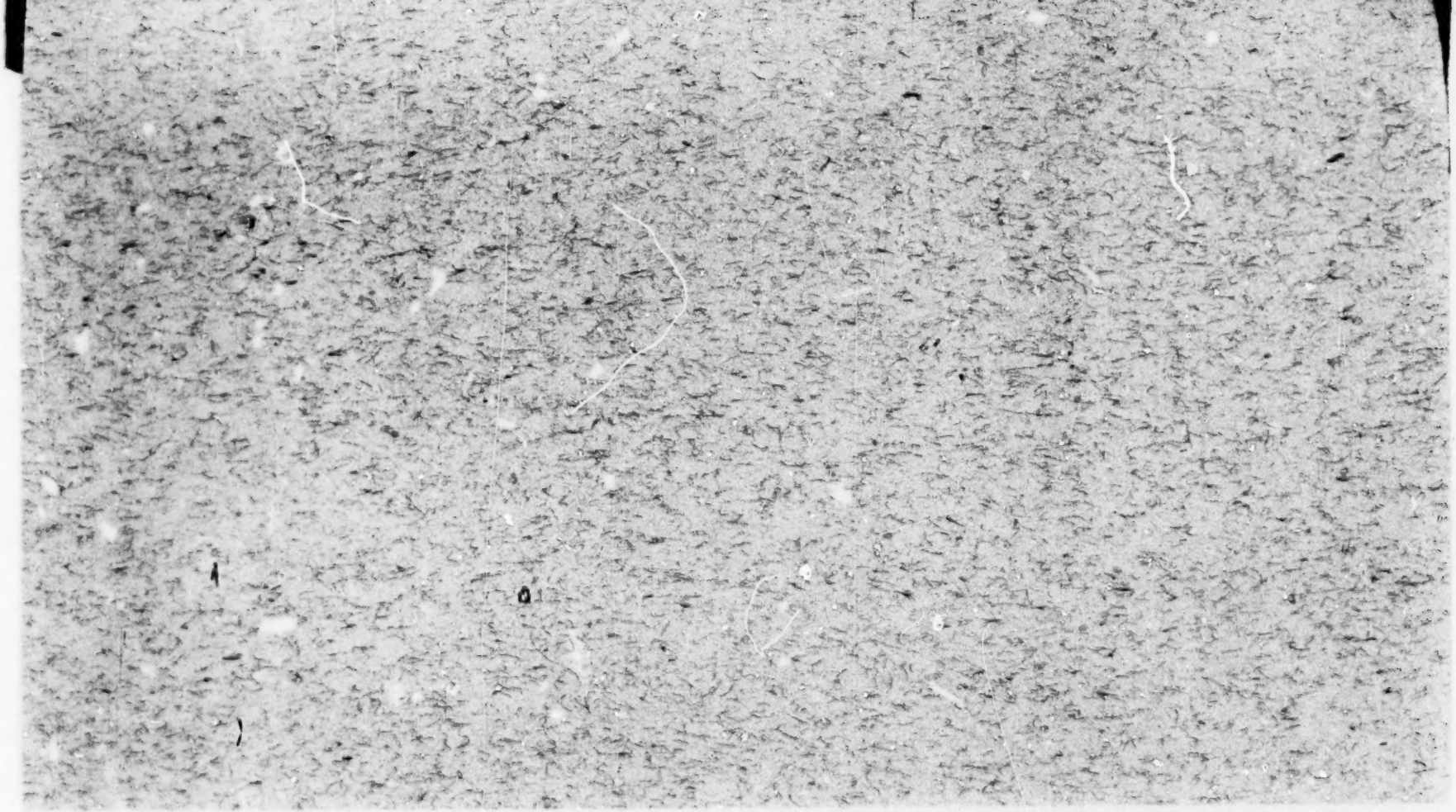
Present Supply: Furthermore, the Board, having taken testimony and made a thorough investigation, has found that there now exists an ample fresh fluid milk supply in Alabama which is unmarketed. The Board, in consideration of these existing facts, now orders the licensee distributors to buy any additional milk from present licensees of this Board—so long as there remains an existing supply within the State.

This Order shall become effective at 12:01 a. m. o'clock on the 1st day of March, 1954.

Done and Ordered at Montgomery, Alabama, this the 29th day of January, 1954.

Alabama State Milk Control Board,
By Mrs. T. L. Bear, Jr.,
Chairman,
Hugh W. Brown, Sr.,
E. Donald Hall,
W. H. Knight,
E. L. Turner, Jr.,
M. D. Gilmer,
For Commissioner of Agriculture
Re Title 22, Sec. 207, 1940 Code of Alabama.

• • • • • • •



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

NO. 464

BUFORD JAMES, et al.; SOUTHERN DAIRIES, et al.,
Appellants

v.

A. W. TODD, as Commissioner of Agriculture and Industries of the State of Alabama,
Appellee

On Appeal from the Supreme Court of Alabama.

MOTION OF APPELLEE TO DISMISS APPEAL

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MOTION

Appellee, pursuant to Rule 16 (b) of the revised rules of this Court, moves that this appeal be dismissed on the ground that said appeal does not present a substantial Federal question of sufficient importance and substance to warrant further consideration and argument of this case.

STATEMENT

This is an appeal from a final decision of the Supreme Court of Alabama, rendered August 22, 1957 (rehearing denied June 5, 1958) affirming a decree of the Circuit Court of Montgomery County, Alabama, In Equity, upholding the constitutionality of Act No.

570, General and Local Acts of the Legislature of Alabama of 1955, page 1239, (Code of Alabama of 1940, Title 22, Section 231 [6-13]—pocket part). The decision of the Supreme Court of Alabama is styled as **Buford James, et al., v. A. W. Todd, as Commissioner,** etc., and reported in . . . Ala. . . ., 103 So. 2d 19-29. Appellants have appealed pursuant to Title 28, U.S.C. Section 1257 (2).

It is the position of Appellee that the issues involved as disclosed by Appellants' Jurisdictional Statement are so unsubstantial and lacking in importance as not to warrant further consideration or argument of this case and that, therefore, this appeal should be dismissed.

ARGUMENT

I

Act. No. 570 of the Legislature of Alabama of 1955 is a valid and constitutional legislative enactment as its purpose is to more effectively utilize existing agencies or departments of the State of Alabama in regulating production, processing and distribution of milk to the end that its inhabitants will be supplied with a wholesome and healthful supply of milk and milk products. The purpose of the Act is expressly declared in Section 1, thereof. The Act is a health measure for the protection of the people of Alabama. The Court below in upholding the validity of the Act viewed it as a health measure and recognized the authority of the State of Alabama under its police power to enact such a law. Authorities cited in the decision of the Court below amply support this position.

II

Act No. 570 of the Legislature of Alabama of 1955 regulates milk coming into Alabama from other states but the regulation prescribed in the Act does not violate the Constitution of the United States as offending the commerce clause thereof as any effect that its requirements may have upon interstate commerce is only incidental or indirect and not an unconstitutional burden thereon. The decision of the Court below recognizes and follows decisions of the United States Supreme Court to this effect.

III

Act No. 570 is valid and constitutional upon its face and consideration thereof should be confined to its terms as enforcement of the Act had not actually begun prior to the beginning of this litigation. The Act is not an economic trade barrier unnecessarily burdening or discriminating against the shipment of milk into the State of Alabama as the Act is primarily a health measure to provide the inhabitants of Alabama with a healthful supply of milk because of the large volume of milk transported into Alabama from other states. The Act does not prevent or prohibit the shipment of milk into Alabama, as anyone may transport any quantity of milk into Alabama so long as such milk meets the health and sanitary standards required for milk produced in the State of Alabama which is not an unreasonable burden upon an importer of milk. The Act readily discloses that it sets forth very reasonable requirements for the importation of milk into Alabama as it amounts to no more than providing additional inspectors for milk coming into Alabama to determine whether such milk meets Alabama require-

ments, which is not an unconstitutional discrimination against such milk.

IV

The decision of the Court below upholding Act No. 570 is consistent with prior decisions of this Court and the cases cited by Appellants in their Jurisdictional Statement are not applicable for the reason that such cases involve requirements declared to be unconstitutional by this Court where conditions prescribed by such requirements made it impossible or near impossible to import the products involved, or an obvious unreasonable or discriminatory burden was placed upon the products to be imported. Act No. 570 is readily distinguishable from such cited cases for the reason that said Act provides reasonable requirements for the importation of milk into Alabama. Applicable cases on the subject of the State regulating imported food products from another State disclose that this Court has followed, more or less uniformly, the rule that there is "broad power in the State to protect its inhabitants against perils to health or safety, . . ., even by the use of measures which bear adversely upon interstate commerce," but, . . ., a State may not "promote its own economic advantages by **curtailment** or **burdening** of interstate commerce." An economic objective, as distinguished from any health, safety and welfare purpose has been rejected. **Hood v. DuMond,** 336 U.S. 525, 93 L. Ed. 865. This rule has been followed in determining whether statutes of the type in question are violative of the Constitution of the United States and the cases cited by Appellants in their Jurisdictional Statement are cases where the state or locality attempted by statute or ordinance to "promote its own economic advantage by curtailment or burdening of

interstate commerce" whereas Act No. 570 is clearly and unmistakably an effort by the State to protect "its inhabitants against perils to health and safety" by regulating the shipment or transportation of milk into the State "to the end that its inhabitants will be supplied with a wholesome and healthful supply of milk." The foregoing rule of law as enunciated in the **Hood** case is so well settled and uniformly followed by this Court, and Act No. 570 is so unquestionably a health measure within the power of the State to enact, that the question presented by this appeal has heretofore been decided by the Court thus rendering such question so unsubstantial as not to warrant a review of this case.

V

Although one who desires to transport milk into Alabama from another state must, under the requirements of Act No. 570, obtain a permit from the Commissioner of Agriculture and Industries which is not required for milk produced in Alabama, we contend that this additional requirement does not constitute an unreasonable discrimination against the importer of milk, as additional safe-guards may be established for out-of-state milk so long as such safe-guards are reasonable and not discriminatory. The Legislature can provide reasonable classifications for the inspection of milk to insure a wholesome supply, and so long as **equal** treatment is accorded to those in the same classification no violation of the Constitution occurs. Act No. 570 establishes a reasonable classification as, obviously, inspecting and determining the wholesomeness and cleanliness of imported milk coming from distant sources is for many reasons in a different category or classification than milk produced locally. The

additional requirements of Act No. 570 are procedural only as the substance of the requirements for importing milk into Alabama is the same which is required for milk produced locally, i.e., such milk must be "produced and handled under sanitary conditions no less adequate in protection of public health than milk produced in the State of Alabama." To produce and handle milk under sanitary conditions no less adequate in the protection of public health than milk produced in Alabama can mean only that the milk must be produced under conditions and standards not lower than those prescribed for Alabama milk which is tantamount to saying that such standards must, at least, **equal** those prescribed for Alabama milk. The system established by Act No. 570 is reasonable and it was within legislative competence for the Legislature of Alabama to establish a separate classification for imported milk and such classification as here established is not violative of the equal protection clause of the 14th Amendment to the Constitution of the United States nor violative of any other constitutional guarantee. **Metropolitan Casualty Insurance Company v. Brownell,** 79 L. Ed. 1070, 294 U. S. 580. **16 C. J. S., Constitutional Law,** Section 100 C, page 458-464.

VI

The reasons set forth by Appellants on pages 6 and 7 of its Jurisdictional Statement wherein they contend that Act No. 570 is violative of the Constitution of the United States which contentions are numbered as I through XIII are all without merit. Act No. 570 does not place an unreasonable or discriminatory burden upon milk transported into Alabama as charged in Nos. I, II and V for the reasons hereinabove stated nor does such Act authorize the adoption of regula-

tions which are more stringent than Health Department regulations as contended in No. III because regulations adopted thereunder cannot exceed the requirements for milk produced in Alabama. No. IV is without merit because the Act clearly authorizes the transportation of milk into Alabama where such milk complies with production and distribution standards for milk produced in Alabama. No. VI is without merit as Appellants, under their contention, place a strained construction or interpretation upon the Act. Nos. VII, VIII, IX, X, XI, XII and XIII under Appellants' contention call for a construction and interpretation of the provisions of the Act or such contentions compare the Act with regulations of the Health Department presently in effect. Such contentions are patently without merit.

WHEREFORE, in view of the foregoing, Appellee respectfully contends that this appeal should be dismissed as no substantial constitutional questions are presented as all of such questions presented by Appellants in its Jurisdictional Statement have heretofore been decided by this Court and the decision of the Court below follows such decisions.

Respectfully submitted,

JOHN PATTERSON, Attorney General of Alabama

GORDON MADISON, Assistant Attorney General

GEORGE O. MILLER, JR., Assistant Attorney General

Attorneys for Appellee.

PROOF OF SERVICE

I, John Patterson, Attorney General of Alabama, one of the attorneys for Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 12th day of November, 1958, I served a copy of the foregoing Motion to Dismiss on the Appellants herein by mailing a copy thereof to Frank M. Dixon, Esq., 811 Comer Building, Birmingham, Alabama, and to Sol E. Brinsfield, Jr., Esq., First National Bank Building, Montgomery, Alabama, Attorneys for Appellants, such copy being enclosed in a duly addressed envelope, with first-class postage prepaid; and, I further certify that on the same date I served a copy of the foregoing Motion to Dismiss on the Intervenor-Appellant, State of Mississippi, by mailing a copy thereof to Joe T. Patterson, Esq., Attorney General of the State of Mississippi, State Capitol, Jackson, Mississippi, who is attorney for such Intervenor-Appellant, such copy being enclosed in a duly addressed envelope, with first-class postage prepaid.

John Patterson

JOHN PATTERSON, Attorney General of
Alabama, State Capitol,
Montgomery, Alabama

Attorney for Appellee.